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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,796	06/21/2001	Edward P. Williams	705880US1	6165

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EXAMINER

O CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/886,796

Applicant(s)
Williams et al.

Examiner
O'Connor

Art Unit
3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on June 21, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. The following is a quotation of 35 U.S.C. 101:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-13 are drawn to a method of producing a disembodied data structure. It has been held that such claims are considered to comprise non-statutory subject matter, for merely manipulating an abstract idea without producing any “useful, concrete, and tangible result.” *In re Warmerdam*, 33 F.3d 1354; 31 USPQ2d 1754 (Fed. Cir. 1994).

Moreover, current Office practice is to reject as non-statutory under § 101, method claims such as claims 1-13 that fail to require the use of any particular technology (e.g., a computer) for failing to fall within the technological arts, thus failing to produce a useful, concrete, and tangible result. Claims must be tied to a technological art. To overcome this aspect of the rejection, a positive limitation in the body of the claim is required to recite the use of some technology, such as a computer *per se* or some other computer element that would inherently and necessarily require a computer (e.g. a website), or else some other aspect or element of technology.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US 6,470,324).

Brown et al. disclose a computer-implemented method for determining a suggested vehicle part stocking level for a vehicle retailer comprising the steps of: receiving from the vehicle retailer at least one of a target fill rate and a target inventory investment; accessing part demand information for the vehicle retailer; and, determining a suggested part stocking level for the vehicle retailer based on the part demand information in view of the target fill rate or the target inventory investment input by the vehicle retailer, but Brown et al. do not disclose accessing part cost information and using that information in part in making the determination of the suggested part stocking level for the vehicle retailer.

However, assessing inventory in terms of its dollar value rather than a numerical quantity of items by summing the cost(s) of the items in inventory is a well known, hence obvious, technique to use in quantifying an amount of inventory in a business.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Brown et al. so as to include the step of accessing part

cost information so that the target fill rate or target inventory investment could be expressed as a dollar value rather than a quantity of items in making of the determination of the suggested part stocking level for the vehicle retailer, as is well known to do, in order to value the inventory of the vehicle retailer in a manner consistent with the financial aspects of operating a for-profit business by minimizing costs, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claims 2 and 4, the method of Brown et al. includes forecasting average weekly sales data for each part in part based on prior sales data for the vehicle retailer and in part based on prior sales data by other vehicle retailers in a proximate geographic area. See, in particular, column 3, lines 9-62, and column 5, lines 17-20.

Regarding claim 3, the method of Brown et al. includes using a variable response smoothing technique to calculate average weekly sales data. See, in particular, column 3, lines 9-11.

Regarding claims 5 and 7, the method of Brown et al. includes computing an optimal inventory stocking level and an optimal re-order level for each part, as well as translating the suggested part stocking level to a suggested part order for the vehicle retailer in view of the current part inventory held by the vehicle retailer. See, in particular, column 5, lines 17-20.

Regarding claim 6, the method of Brown et al. includes determining the suggested part stocking level in view of inventory constraints. See, in particular, column 5, lines 26-28.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to the disclosure.
6. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is **(703) 746-3976**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

Inquiries of a general nature or simply relating to the status of the application should be directed to the receptionist, whose telephone number is **(703) 308-1113**.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at **(703) 308-5183**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (fax-back auto-reply receipt service provided). Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be left with the receptionist on the seventh floor of Crystal Park Five, 2451 Crystal Dr, Arlington, VA 22202.

GJOC

June 14, 2004

A handwritten signature in black ink, appearing to read "Gerald J. O'Connor", followed by the date "(6-14-04)" in parentheses.

Gerald J. O'Connor

Patent Examiner

Group Art Unit 3627